

Henry Gage, Esq; Appel

Elizabeth Lister, Widow, Respond

The Respondent's C A S E.

Deeds of Separation, dated 10th and 11th of June 1687.

THAT there being a notorious Separation between the Appellant and his late Wife, the Lady Boteler: And the said Lady Boteler having a separate Maintenance of 300 l. per Ann. secured to her by the Appellant by several Deeds, dated the 10th and 11th of June 1687. out of her own Jointure, which was made to her by Sir John Boteler, her former Husband, and which was of the Value of 800 l. per Ann. did in the Year 1687. come to Lodge and Board with the Respondent at her House in *Austin-Friars, London.*

That the said Lady Boteler, having lived several Years with the Respondent, and having saved Monies out of her said separate Maintenance, and the Respondent having done divers Kindnesses and Services for the said Lady Boteler, and the said Lady Boteler so highly resenting the Appellant's Treatment of her, that she often declared he should never be the better for what she saved, and being satisfied that her Children by her first Husband were very plentifully Provided for: The said Lady Boteler thought fit in return of the Respondent's Services and Kindnesses, to give the Respondent the Sum of 500 l. in her Life time, being advised she could not give the same by her Will, being a feme Covert, which said Sum of 500 l. the Respondent placed in the Hands of *Ralph Lawton, Deceased, and Christopher Mountague, Esq;* and took their Joint-Note for the same.

That the Respondent in return of such Gift, paid the said Lady Boteler's Apothecaries Bill for Physick in her Illness, and also paid divers other Sums of Money, which the said Lady Boteler owed at the time of her Death, to several Persons, besides what she was at her Death indebted to this Respondent for Board, and otherwise; and Buried the said Lady Boteler at her own Charges, which Burial Cost the Respondent 130 l. and upwards, but never charged any Part thereof to the Appellant.

The Appellant's Bill filed in Chancery, 30th June 1701.

That the 30th of June 1701. the now Appellant Exhibited his Bill of Complaint into the High Court of Chancery, as Administrator to his said late Wife against the now Respondent, and *Charlewood Lawton, and Ralph Lawton, Executors of the said Ralph Lawton, Deceased, and the said Christopher Mountague,* pretending that the Respondent was but a Trustee for him, and to call the said now Respondent to an Account for the said 500 l. which Bill this Respondent having answered, and denied the whole Equity thereof, the Appellant proceeded no further, but suffered his said Bill to be dismissed, for want of Prosecution, with Costs to be Taxed by the Master, *prout* Order of the 2d of June 1702.

Bill dismissed 2d June 1702.

Lawton's Bill of Interpleader, filed 10th of Novemb. 1703.

That the 10th of November 1703. the said *Charlewood, and Ralph Lawton, and the said Christopher Mountague,* Exhibited their Bill of Interpleader against the now Appellant and the Respondent for the Direction of the Court; to whom they might safely Pay the said 500 l. to which the said now Appellant and the Respondent severally answered.

Appellant's Bill retained and amended, per Order 23d Decemb. 1703.

That on the 23d of December, 1703. the Appellant (after divers Vexatious Proceedings, touching the Regularity of the said Dismission, which was reported against him) obtained an Order for Retaining and Amending his Bill, upon Payment of Costs, and accordingly Amended his said Bill; To which the Respondent Answered,

Decree in Lawton's Cause 24th of January 1703.

That in the *Interim*, the Cause in which the said *Charlewood and Ralph Lawton* were Plaintiffs, being at Issue, and the Appellant and Respondent, having both Examined their Witnesses, and Publication duly passed the same, came on to be Heard on the 24th of January, 1703. before the Right Honourable the Late Lord-Keeper of the Great Seal of England, who Declared, That it was neither Confessed nor Proved in the said Cause, that the said Money was in Trust for the said now Appellant, but that it appeared that the Respondent had good Title to the said 500 l. And forasmuch as the said Money was brought into Court by the said Plaintiffs, for the obtaining an Injunction in the said Cause, His Lordship did ORDER and DECREE, That the said 500 l. should be Paid out of Court to the now Respondent; And that the said Plaintiffs should Pay unto the now Respondent, Interest for the said 500 l. at the Rate of 5 l. per Cent. per Annum, to the Time that the said 500 l. was brought into Court: And it was referred to Sir John Franklyn, Kt. one of the Masters of the said High Court of Chancery, to compute the said Interest: And upon Payment of the said 500 l. out of Court to the Respondent; And also upon the Plaintiffs Payment of the Arrears of Interest, It was Ordered and Decreed, That the Respondent should deliver up the said Note to the Plaintiffs to be Cancelled. And it was further Ordered, That the now Appellant should Pay unto the said Plaintiffs, and also to the said now Respondent, their respective Costs of the said Suit, to be Taxed by the said Master.

Second Amended Bill per Order of 14th of Feb. 1704. not filed till the 13th of March following.

That after the Hearing the said Cause, and after the Respondent had received the said 500 l. out of Court, and the Plaintiffs had Paid the Respondent all Arrears of Interest, and the Respondent had delivered up the said Note to be Cancelled, Pursuant to the said Decree; the said Appellant, further to Oppress and Perplex the said Respondent, procured another Order, Dated the 14th of February 1704. again to Amend his said Bill; and on the 13th of March following Filed the same.

Order for payment of Costs, &c. 16th of March 1704.

That the said Appellant not having Paid the Respondent her Costs, as Decreed, the Respondent, as Advised, Petitioned the Late Lord-Keeper, and obtained an Order of the 16th of March last, that the Appellant should not be at Liberty to proceed on his Amended Bill for the 500 l. therein mentioned, until he had Paid the Respondent her Costs in *Lawton's Cause*; and that the Respondent should have a Month's Time, after Payment of such Costs, to Plead Answer or Demurr to the Appellant's said Amended Bill.

Costs paid 11th of June 1705. Plea filed 9th July 1705.

That the Appellant not Paying the Costs until the 11th of June last, the Respondent on the 9th of July following, Pleaded the said Decree in Barr, which Plea the Appellant has not since thought fit to bring on to be Argued, but instead of proceeding thereon, has brought this Appeal.

WHEREFORE, and for that the Proceedings of the said Appellant have been very Vexatious and Expensive to this Respondent, and thereby rendred the said Intended Kindness of the said Lady BOTELER very Prejudicial to the Respondent and her Family; She therefore Humbly Hopes the said DECREE shall be Affirmed, and the said Appeal dismissed with Costs.

STE. HERVEY.

BENJ. NELSON.